

Remarks

The Applicant respectfully requests reconsideration of the present application based on the foregoing amendments and the following remarks.

Additionally, the Applicant wishes to thank Examiners Haney and Moran for the courtesy of extending an Interview to the inventor, Victoria Kanitz, and Applicant's representative, James J. Bindseil. During the Interview, the prior art and the independent claims were discussed. The Interview was helpful for explaining how the recited language defines over the cited references.

As also discussed in the Interview, apparently the Office Action mailed October 27, 2005 and, the Preliminary Amendment filed October 28, 2005 crossed in the mail. The Preliminary Amendment filed October 28, 2005 which was prepared and filed without any knowledge of the October 27, 2005 Office Action, and, as such, the broader claims of the Preliminary Amendment were not canceled and/or amended to avoid prior art.

In the above amendments, claims 10-12, 16-18, 21-22, 29 and 31 have been amended, and new claims 32-34 have been added. All of these amendments and new claims are fully supported throughout the specification, no new matter has been added and no new issues have been raised. Therefore, after entry of the above amendments, claims 10-34 will be pending in this application.

With regard to the Office Action mailed October 27, 2005, the objection to claims 1, 4 and 5, the rejections of claims 5, 6 and 9 under 35 USC § 112, second paragraph, and the rejections of claims 1-8 under 35 USC § 103(a) of claims 1-8 under various combinations of U.S. Patent No. 2,021,144 to Beck, U.S. Patent No. 3,668,707 to Williams, U.S. Patent No. 2,462,727 to Danelz, and U.S. Patent No. 2,741,773 to Wolfe ("the cited references"), are now moot based on the cancellation of these claims in the Preliminary Amendment filed October 28, 2005.

New Claims

In the Preliminary Amendment, the Applicant added new claims 10-31 to cover subject matter to which they are entitled. Also, for similar reasons, the Applicant has presently added new claims 32-34. For the reasons stated below, these claims define over the cited references, and thus the Applicant respectfully requests their allowance.

For example, with regard to claim 10 and as discussed in the Examiner Interview, there is no combination of the cited references that discloses or suggests an article of headwear having first and second fabric members that are attached together, where the first fabric member is configured to cover a portion of a neck of a person and the second fabric member is configured to cover a portion of a head of the person. In contrast, the ear shield of Beck and the lady's headpiece of Williams respectively disclose only a single band and a single sheath, rather than the claimed fabric members that are connected to one another in a manner that provides a specifically configured article of headwear. Similarly, the neck scarf of Danelz and the neck scarf and head covering of Wolfe are only single pieces of material that respectively only cover the neck and the head. There is no suggestion in any of the cited references that would lead one skilled in the art to the combination of the first and second fabric members that are attached together, where the first fabric member is configured to cover a portion of a neck of a person and the second fabric member is configured to cover a portion of a head of the person, as recited by claim 10.

Further, with regard to claim 11 and as discussed in the Examiner Interview, there is no disclosure or suggestion in the cited references of the third end and the fourth end of the second fabric member being attachable to the first intermediated portion of the first fabric member in a predetermined, spaced apart relationship. As noted above, none of the cited references disclose or suggest two fabric members being connected together in the manner as recited by claim 10. Consequently, the cited references do not disclose or suggest a predetermined, spaced apart relationship of these connections.

Additionally, with regard to claim 12 and as discussed in the Examiner Interview, there is no disclosure or suggestion in the cited references of first and second fabric members connected together to respectively cover a portion of the neck and head, with a first width of an intermediate portion of the second fabric member being less than a second width adjacent the third end and the fourth end of the second fabric member. As noted above, none of the cited references disclose or suggest two fabric members being connected together in the manner as recited by claim 10. Further, the cited references do not suggest connecting together two fabric members in the recited configuration, and providing the recited first and second widths.

Further, with regard to claim 13 and as discussed in the Examiner Interview, there is no disclosure or suggestion in the cited references of the second fabric member having a first side edge opposing a second side edge, wherein the first side edge has a first length and the second side edge having a second length, and wherein the first length is greater than the second length. As noted above, none of the cited references disclose or suggest two fabric members being connected together in the manner as recited by claim 10. Further, the cited references do not suggest a second fabric member having edges of different lengths, as recited by claim 13.

Additionally, claim 14 depends from claim 13, and claims 15-20 depend from claim 10, and thus define over the cited references for the reasons stated above. Further, each of these claims is independently patentable over the cited references, as the cited references do not disclose or suggest the combination of features recited by these claims.

For example, with regard to claim 17, the cited references do not disclose or suggest the spaced apart relationship between the third end and the fourth end being configured such that, when in use, the second fabric member extends from a top of the head of the person to cover at least a portion of each ear of the person.

Further, with regard to claim 21, and for reasons similar to those discussed above with regard to claim 13, the cited references do not disclose or suggest an article of headwear that comprises a scarf member attached to a band member, wherein the band member has edges with different lengths.¹

Additionally, the cited references do not disclose or suggest the predetermined spacing and the band member widths as respectively recited by claims 22 and 27.

Further, claims 23-26 and 28-30 depend from claim 21, and thus define over the cited references for the reasons stated above. Further, each of these claims is independently patentable over the cited references, as the cited references do not disclose or suggest the combination of features recited by these claims.

Moreover, with regard to claim 31, the cited references do not disclose or suggest a first means having a first portion sized to cover at least a rear portion and a side portion of a neck of a person, a second means having a second portion and a third portion respectively sized to cover at least a portion of each ear of the person without covering at least a predetermined rear portion of

¹ See, e.g., Specification at paragraphs 7 and 16-19, and Fig. 6.

a head of the person, wherein the second means is connected to the first means in two places separated by a predetermined spacing along at least a part of the first portion of the first means, and wherein the second portion further comprises an edge adjacent to the first portion of the first means, wherein the edge and the part of the first portion corresponding to the predetermined spacing define a rearward opening between the first means and the second means.²

Additionally, with regard to claim 32, and as discussed during the Examiner Interview, the cited references do not disclose or suggest an article of headwear having: a first fabric member extending along a longitudinal axis between a first end and a second end, the first fabric member having a first intermediate portion between the first end and the second end; and a second fabric member defined by a first side edge opposing a second side edge extending between a third end and a fourth end, wherein the third end and the fourth end are both attached to the first intermediate portion such that the second side edge and the intermediate portion define a rearward opening, wherein the rearward opening is sized to accept a rear portion of a head of a person, and wherein the first side edge is disposed at a predetermined oblique angle relative to the longitudinal axis of the first fabric member.³ The cited references do not disclose any connected fabric members that have a rearward opening, nor do they disclose or suggest the predetermined oblique angle.

Similarly, with regard to claim 33, the cited references do not disclose or suggest a predetermined oblique angle being greater than about 90 degrees.⁴

Also, with regard to claim 34, the cited references do not disclose or suggest the recited predetermined, spaced apart relationship.

Additionally, in support of the non-obviousness of the recited invention,⁵ the present claims are non-obvious in view of the cited references based on the licensing of the design of the disclosed Article of Headwear. In particular, on May 24, 2005, the Applicant entered into a *Patent and Technical Information License Agreement* with Bollman Hat Company. Based on this Agreement, the Applicant will receive royalties on products that embody the structure of the disclosed Article of Headwear. The Bollman Hat Company “provides the world with the

² See, e.g., Specification at Fig. 6.

³ *Id.*

⁴ *Id.*

⁵ MPEP, section 2141, part III, “Objective Evidence Must Be Considered.”

headwear industry's top brands that include Bailey®, Betmar®, Country Gentleman®, Eddy Bros.®, KANGOL®, Plaza Suite®, Helen Kaminski®, and Timberland®.”⁶ Thus, the *Patent and Technical Information License Agreement* demonstrates that one of the major manufacturers in the headwear industry recognizes the uniqueness of the present Article of Headwear invention.

Therefore, as the cited references do not disclose or suggest the presently claimed invention, the Applicant respectfully requests the Examiner to allow claims 10-34.

Information Disclosure Statement

The Applicant notes that an Information Disclosure Statement was filed on October 28, 2005 along with the Preliminary Amendment.

Objection to the Specification

The Applicant respectfully traverses the Examiner's objection to the specification. The title of an invention “should be brief but technically accurate and descriptive.”⁷ The title “Article of Headwear” is brief, and is a technically accurate description of the invention. Thus, the Applicant respectfully requests that the Examiner withdraw this objection.

⁶ www.bollmanhats.com/brands.cfm

⁷ MPEP, Section 606.

Conclusion

Based on the above, it is believed that this application is now in condition for allowance, for which early action is requested.

The Examiner is invited to telephone Applicant's representative, James J. Bindseil, with any questions or comments that may expedite the issuance of this case.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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